



# COUNTY OF LOS ANGELES

## CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

### MEMBERS OF THE BOARD

June 1, 2004

Maria M. Oms  
Auditor-Controller  
John F. Krattli  
Office of the County Counsel  
Rocky Armfield  
Chief Administrative Office

Honorable Board of Supervisors  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Re: **Magda Gausin, et al. v. County of Los Angeles**  
**Los Angeles Superior Court Case No. BC 288 839**

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$199,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Parks and Recreation.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Department of Parks and Recreation.

Return the executed, adopted copy to Georgene Salisbury, Suite 648  
Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson  
Los Angeles County Claims Board

MMO/gs

Enclosures

# MEMORANDUM

May 11, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: HENRY NELSON  
Nelson and Fulton

ROGER H. GRANBO  
Principal Deputy County Counsel  
General Litigation Division

RE: Magda Gausin, et al. v. County of Los Angeles  
Los Angeles Superior Court Case No. BC 288839

DATE OF  
INCIDENT: May 15, 2002

AUTHORITY  
REQUESTED: \$199,000

COUNTY  
DEPARTMENT: Parks and Recreation

---

## CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☐ Recommend to Board of  
Supervisors for Approval

\_\_\_\_\_, Chief Administrative Office  
**ROCKY A. ARMFIELD**

\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on \_\_\_\_\_, 2004

## SUMMARY

This is a recommendation to settle for \$199,000, a lawsuit filed by Carlos and Claudia Gausin, and their minor daughter Magda Gausin, who was injured when a gate maintained by the Department of Parks and Recreation fell on top of her while she was playing.

## LEGAL PRINCIPLES

A public entity is liable for injuries caused by a dangerous condition of its property if the property was in a dangerous condition at the time of the injury, the injury was caused by the dangerous condition, the dangerous condition created a foreseeable risk of the type of injury that was suffered, and the public entity had actual or constructive notice of the dangerous condition.

## SUMMARY OF FACTS

On May 15, 2002, at approximately 5:20 p.m., Magda Gausin, (then age 6) was with her parents at City Terrace Park, when a metal gate fell on her as she was retrieving a basketball. The gate that fell on Magda Gausin was a gate that leads to the entrance of the basketball court at the park. The gate struck Magda Gausin on the head and face area. There also were reports that children were seen swinging on the gate prior to this accident. The gate has since been repaired, repainted, and reinstalled.

Magda Gausin suffered bruises and lacerations to her head and face, blurred vision, epidural bleeding, a linear skull fracture, and post-concussion syndrome. She was taken and subsequently treated at County-USC Medical Center. She has generally recovered from her injuries, and complains now of only intermittent headaches.

Carlos and Claudia Gausin also claimed to have suffered emotional distress. Neither of them received any medical evaluation or treatments.

## DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Magda Gausin's Medical Expenses	\$ 77,000
Magda Gausin's Pain and Suffering	\$250,000
Carlos Gausin's Emotional Distress	\$100,000
Claudia Gausin's Emotional Distress	<u>\$100,000</u>
Total	<u>\$527,000</u>

The proposed settlement calls for the County to pay to Carlos, Claudia, and Magda Gausin \$199,000 for all claims for damages, costs, and attorney fees.

## STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

Expenses incurred by the County in defense of this action are attorney fees of \$14,384 and \$5,872 in costs.

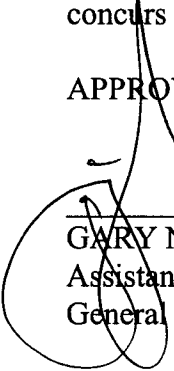
## EVALUATION

This is a case of disputed liability. While the Department did not have notice that the gate hinge was in poor condition prior to the accident, it had circulated a Safety Bulletin Notice to all facility heads and maintenance personnel that required an inventory be taken of all fabricated metal gates, and that padlocks be provided to secure the gates from movement when in the open and closed positions. The attorney for the Gausins will argue that had the gate been padlocked in the open position, it would not have fallen on Magda Gausin.

A reasonable settlement at this time will avoid further litigation costs, and a jury verdict that could exceed the proposed settlement.

We join with our private counsel, Nelson and Fulton, and our third party administrator, Carl Warren and Company, in recommending a settlement of this matter in the amount of \$199,000. The Department of Parks and Recreation concurs in the recommendation.

APPROVED:



\_\_\_\_\_  
GARY N. MILLER  
Assistant County Counsel  
General Litigation Division

GNM:RHG:scr

## **County of Los Angeles Department of Parks and Recreation**

### **CORRECTIVE ACTION PLAN**

**LAWSUIT OF:** Gausin, Magda, et al. v. County of Los Angeles, et.al  
Superior Court of the State of California  
Case No. BC288839

**INCIDENT DATE:** May 15, 2002, at approximately 5:20 pm

**INCIDENT LOCATION:** City Terrace Park – 1126 North Hazard Avenue, Los Angeles, California 90063

**RISK ISSUES:** The Department of Parks and Recreation is responsible for providing the public and its employee's safe facilities and equipment in order to minimize potential safety hazards. In conjunction with this responsibility, the Department of Parks and Recreation regularly conducts a facility/equipment inspection program that focuses attention on correction of hazards, or potential hazards, that may cause monetary loss or, more importantly, personnel or patron loss or injury to the Department. Correction of any of these hazards contributes significantly to the efficiency of the Department's operation and overall mission.

**INVESTIGATIVE REVIEW:** On May 15, 2002, at approximately 5:20 p.m., Magda Gausin, (then age 6) was with her parents at City Terrace Park, when a metal gate fell on her (Magda Gausin) as she was retrieving a basketball. The gate that fell on Magda Gausin was a gate that leads to the entrance of the basketball court at the park. The gate struck Magda Gausin on the head and face area. There also were reports that children were seen swinging on the gate just prior to this accident. The gate has since been repaired, repainted and reinstalled.

Magda suffered bruises and lacerations to her head and face, blurred vision, epidural bleeding and post-concussion syndrome. She was taken and subsequently treated at County-USC Medical Center. She has generally recovered from her injuries and complains now of only intermittent headaches which occur a couple of times every month or two. The parents also claimed emotional distress. Neither of them received any medical evaluation or treatments.

A lawsuit against the County Of Los Angeles was subsequently filed by the plaintiffs Carlos Gausin, Claudia Roman and Magda Gausin. The plaintiffs paid no money for Magda's medical treatment and the parents were not treated. There were no claims for lost wages or any other special damages. Magda's medical bills totaled \$76,743.00 for

treatment at County-USC Medical Center. The plaintiffs were primarily seeking general damages which included pain, suffering and emotional distress.

On Wednesday, May 5, 2004, the County settled with the plaintiffs for \$199,000 in full settlement of the lawsuit subject to the settlement being approved by the Los Angeles County Board of Supervisors. The allocation of the moneys between the plaintiffs will be made by the plaintiffs and their counsel subject to the court's approval of the minor's compromise.

**TRAINING ISSUES:** At the time of this accident, the County of Los Angeles Department of Parks and Recreation had established and implemented written policies and procedures concerning the safe operation and inspection of all departmental facilities and equipment. These written policies and procedures pertain to and included the following:

- Frequency of inspections at all Departmental facilities and parks
- Responsibilities of all Division Heads and/or Facility Heads
- Establishment, completion and filing of facility inspection reports (P&R 204)
- Establishment of a daily "walk-through" inspection of every facility
- Corrective action policies and procedures
- Ongoing "Tailgate" meetings by facility maintenance staff
- Use and completion of P&R "166" form (form used to report and request park repairs)
- Emergency Crew availability

In addition, on October 23, 2001 (seven months prior to this accident), Department management circulated a Safety Bulletin Notice to all Facility Heads and Maintenance Personnel that required that an inventory be taken of all fabricated metal gates, and that padlocks be provided to secure the gates from movement when in the open and closed positions.

**POLICY ISSUES:** Despite the many policies and procedures already in place prior to this highly unusual and unique catastrophic patron accident, which was the first and only such type of accident on record within the Department, the accident occurred nevertheless. This accident was thoroughly investigated by Carl Warren & Co., County of Los Angeles Claims Management-Claims Adjusters and the Department of Parks and Recreation's Safety Office.

The investigation has been completed and concluded that Magda Gausin was injured as the result of a failure of a metal fabricated gate. The investigation also was not able to distinguish whether or not the welded metal hinge or the metal gate frame failed causing the gate to fall on Ms. Gausin. A determination has been made that this accident might possibly have been prevented had the metal swinging gate been

secured and locked in the open position. This would have prevented gate movement prohibiting children from swinging on the gate thus minimizing the physical stress on the hinge and adjacent metal structure. Additionally, it is presumed that had the hinge failed while the gate was secured, the locking mechanism would have prevented the gate from completely falling over.

**CORRECTIVE ACTION:** As a result of this accident and the subsequent follow-up investigation, this Department is expeditiously implementing the following corrective measures and action plans designed to help mitigate the possibility of this type of accident from reoccurring:

- The Department will inventory and inspect all metal swinging gates; both vehicle entry/exit gates and pedestrian gates, at all facilities for evidence of wear and/or metal fatigue. Any noticeable repairs will be corrected during this inspection process.
- The Department has provided locks and/or modified all metal swinging vehicle entry gates to accept locking hardware when both in the open and closed position. The Department has issued a new directive requiring that all vehicle entry gates are to be locked both in the open and closed position at all facilities.
- The Department will provide locks and or modify all existing pedestrian swinging metal gates to accept locking hardware when both in the open and closed position. The Department has implemented a Department-wide directive and policy requiring that all gates at all departmental facilities be locked in both the open and closed position.

Summary: Since the County is self-insured, it pays patron accident losses from County funds. Therefore, patron injuries and accidents are potentially very costly to the County and this Department. This Department will reiterate to all appropriate facility managers and park staff the importance of conducting more meticulous and stringent facility gate inspection practices. By ensuring that all of our department policies and procedures pertaining to facility gate maintenance are followed, we should be able to decrease the possibility of this type of unfortunate accident from reoccurring.